

TABLET AUGUST

What will the country's current epidemic of expenditure cuts mean for the rule of law and the administration of justice? Led by the wiliest and most experienced politician active in public life today, Kenneth Clarke's Ministry of Justice has been among the most enthusiastic of all the departments when it has come to driving ahead with swingeing budget cuts. It produced a structural reform plan so early that a delighted prime minister joined in at its launch and the Department has already warned staff (in a letter from its finance director, duly leaked to the Public Services Union) to expect a £2 billion cut in its overall £9 billion budget. Amazingly this vast sum is at the *low* end of the kind of reductions the Chancellor George Osborne is after – he'd prefer £4 billion. But getting the budget down by even just under 25 per cent or so inevitably entails savage cuts, not just in the infrastructure of the department but to jobs as well: the Union estimates that about 15,000 of the 80,000 workforce will have to go, and this may well be right given that staff costs amount to nearly half the Department's yearly spend. It seems inevitable that there will be industrial action before the cost of these former workers is passed over to the Department of Welfare, albeit it should in fairness to the government be added that they may well of course quickly get jobs in the exciting new private sector which we are promised is on the way (and that while waiting upon this capitalist nirvana they will be cheaper for the taxpayer poking around at home doing nothing on very little than working in the hated public sector for the good of the state).

Then there are the things that this shrinking department actually does. You can get £2 billion tomorrow by freeing all prisoners or simply closing down the justice system but either of these might be thought too much of a burden, even on the Big Society of volunteers that the Prime Minister sees a lean and fit privatised Britain morphing into under his friendly moral tutelage. More likely is a constant drip, drip of cutting: £40 million from closing down 150 or so courts (on which the government is already consulting); cutting back on legal aid through restricting the number of law firms that can do it (already in the works, causing the senior judge in the family division of the high court to warn that there is a 'grave danger' that the family justice system will 'simply implode'); refusing legal aid to people in divorce cases, on the basis that they should have taken out private insurance again such a sad eventuality the moment they had returned from their honeymoon. Then there are the tens of millions spent on judicial review cases against the government and other public authorities, including all those immigration and asylum cases that so rile the right wing press. The problem with really dramatic change here is that the judges are not just another bunch of civil servants who can be ordered into line: they have a separate status, indeed are an entirely independent branch of government and (more to the point) can refuse to play along with

government plans in a manner denied the rest of us – by simply declaring them illegal. For example the right of access to the courts is not just a part of civilised living, it is a human right under the European Convention on Human Rights and demands state support for litigants who would be otherwise completely unable to cope. This is one of the reasons why from a departmental point of view wholesale sacking makes most sense.

One area where the cuts frenzy may do some good is in the prisons, which are grossly over-crowded and eating up more and more resources. An EU directive which comes into force next year will enable the UK to deport 4,500 EU nationals back to the EU, thus freeing expensive prison places. But the root of the problem has been Britain's absurd cross-party consensus that jail is a good idea and that as many criminals as possible should end up there for as long as possible. Of course this is not how it is put, with lip-service always paid to the need to lower the prison population – but no area epitomises the vulgarity of our contemporary political culture more than the cravenness of our politicians in the face of the latest media-inspired campaign by this or that victims' group to force sentences ever upwards. Now under cover of the financial crisis Kenneth Clarke seems to be about to do something about this. He has launched what he has called (in a speech to the judges in July) a 'sensible' review of sentencing policy. The plan is to focus more on rehabilitation – though whether the resources will be there to do this properly remains to be seen, with the Ministry's structural plan having spoken ominously of the need to 'harness the innovation of the private and voluntary sectors' in this area. But the sentiment is a good one and of all the ministers in the Cabinet there is perhaps no one better equipped than Kenneth Clarke to see off the media if it contrives a crisis around the implementation of a progressive penal policy on the basis of this or that one-off case.

Another area which may do well under the new regime at justice is civil liberties. In his speech to judges Kenneth Clarke spoke of a duty on everyone present 'to defend the rule of law and civil liberties in a free society'. There are detailed promises to weed out unnecessary criminal laws, to expand freedom of information legislation, to cut back on libel law and (albeit more controversially) to establish a commission to investigate the creation of a new bill of rights for Britain. All this will be music to many ears, particularly those of the Liberal Democrats for whom such issues have long mattered more than most. They can look forward to a blizzard of initiatives promoting freedom and constitutional change – and console themselves that are making a real difference. But meanwhile jobs will be being cut, legal aid drastically limited, and effective judicial review made a practical impossibility for all but the very rich. The government will be liberal certainly: liberal – and vicious.

